UNITED STATES PATENT AND TRADEMARK OFFICE

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EXAMINER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 May 2008*.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4-14,16-25 and 27-29* is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) *1,2,4-14,16-25 and 27-29* is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All   b)☐ Some * c)☐ None of:
        1.☐ Certified copies of the priority documents have been received.
        2.☐ Certified copies of the priority documents have been received in Application No. _____.
        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____ .

DETAILED ACTION

Applicant's Response

In Applicant's Response dated 05/30/2008, Applicant amended Claims 1, 12, 13, 23, and

27, cancelled claims 3, 15, and 26, and added claims 28 and 29, and argued against all objections

and rejections previously set forth in the Office Action dated 02/04/2008.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or
> any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and
> requirements of this title.

Claims 12 and 23-25 are rejected under 35 U.S.C. 101 because the claimed invention is

directed to non-statutory subject matter.

Claims 12 and 23 are considered software per se. Computer programs may be explicitly

claimed as, for example, a series of code or instructions for performing functions or may be

implicitly claimed as, for example, a system, a module or an apparatus. Where there is no

evidence in the specification that a means which may be interpreted as software, hardware or

combinations thereof necessarily includes hardware, it will be interpreted in its broadest

reasonable sense as a software means, which is the case here.

Thus a claim to functional descriptive material, including computer programs, per se, is

not patent eligible subject matter. Claims 24 and 25 are rejected as inheriting the deficiencies of

claim 23.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on
sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 5-14, 16, and 21-25 are rejected under 35 U.S.C. 102(b) as being

anticipated by Craig Janik (Pub. No US 2002/0013852 A1), hereinafter "Janik".

For the convenience of the Applicant, the Examiner has pointed out particular references
contained in the prior art(s) of record in the body of this action. Although the specified citations
are representations of the teachings in the art and are applied to the specific limitations within the
individual claim, other passages and figures may apply as well. The Applicant should consider
the entire reference(s) as applicable as to the limitations of the claims.

As to independent claim 1, Janik teaches a method comprising:

identifying a preference corresponding to a user (page 6 paragraph [0082]);

detecting a current display window (page 5 paragraphs [0075] [0076], page 6 paragraph

[0087]);

prefetching at least one audio/visual content in response to the current display window

and the preference (Figs. 3,4, page 6 paragraphs [0082] [0094], page 11 paragraph [0167], page

12 paragraph [0184], page 13 paragraphs [0192]-[0193]); and

setting a prefetch parameter for a frequency of prefetching in response to the preference

(page 6 paragraph [0105], page 11 paragraph [0165]).

As to dependent claim 2, Janik teaches setting a prefetch parameter for a range of

display windows in response to the preference (Figs. 5, 7, 9).

As to dependent claim 5, Janik teaches wherein the audio/visual content includes one of

a document, an image, audio data, and video data (page 1 paragraph [0009]).

As to dependent claim 6, Janik teaches wherein the preference includes viewing habits

and selected genres (Fig. 22, page 6 paragraph [0082]).

As to dependent claim 7, Janik teaches wherein the prefetching further comprises

transmitting the audio/visual content to a prefetching buffer (page 1 paragraph [0008], page 5

paragraph [0072], page 12 paragraph [0176]). It is well known that a buffer is a region of

memory to hold data temporarily until transferred. While Janik teaches the system including

memory, he further teaches a Gateway storage peripheral which allows storage of data until the

data is transferred, which one skilled in the art would considered equivalent to a buffer.

As to dependent claim 8, Janik teaches wherein the prefetching further comprises

updating the audio/visual content based on the current display window (page 11 paragraph

[0167]).

As to dependent claim 9, Janik teaches wherein the preference includes a play

list (page 8 paragraph [0132]).

As to dependent claim 10, Janik teaches wherein the preference includes a genre

selection (Fig. 22, page 6 paragraph [0082]).

As for dependent claim 11, Janik teaches wherein the preference includes a

plurality of audio/visual content (Fig. 22, page 6 paragraph [0082]).

As for independent claim 12, Janik teaches a system comprising:

means for identifying a preference (page 6 paragraph [0082]);

means for organizing audio/visual content using a parameter (page 5 paragraphs [0076]

[0077]);

means for detecting a current display window (page 5 paragraphs [0075] [0076], page 6

paragraph [0087]); and

means for prefetching at least one audio/visual content in response to the current display

window and the preference (Figs. 3,4, page 6 paragraphs [0082] [0094]).

means for setting a prefetch parameter for a frequency of prefetching in response to the

preference (page 6 paragraph [0105], page 11 paragraph [0165]).

As to independent claim 13, Janik teaches a method comprising:

detecting an activity (page 6 paragraph [0082] → user selecting preferences);

setting a prefetch parameter based on the detected activity (page 6 paragraph [0082]),

wherein the prefetch parameter includes a frequency of prefetching (page 6 paragraph [0105],

page 11 paragraph [0165]);

detecting a current display window (page 5 paragraphs [0075] [0076], page 6 paragraph

[0087]); and

prefetching a content item based on the prefetch parameter and the current

display window (Figs. 3,4, page 6 paragraphs [0082] [0094]).

As to dependent claim 14, Janik teaches wherein the prefetch parameter includes a range

of display windows (Figs. 5, 7, 9).

As to dependent claim 16, Janik teaches selecting at least one audio/visual content based

on a search parameter (page 5 paragraphs [0079]).

As to dependent claim 21, Janik teaches updating the prefetch parameter based on an

additional activity (page 11 paragraphs [0165]).

As to dependent claim 22, Janik teaches prefetching at least one additional audio/visual

content based on a changing current display window (page 11 paragraph [0167]).

As to independent claim 23, Janik teaches a system comprising:

a media container configured for storing an audio/visual content item ("Internet", Fig. 1

reference characters 8 and 10);

a prefetch buffer configured for temporarily storing a prefetched audio/visual content

item (page 1 paragraph [0008], page 5 paragraph [0072], page 12 paragraph [0176]). It is well

known that a buffer is a region of memory to hold data temporarily until transferred. While

Janik teaches the system including memory, he further teaches a Gateway storage peripheral

which allows storage of data until the data is transferred, which one skilled in the art would

considered equivalent to a buffer.

and

a presentation layer configured for transmitting the prefetched audio/visual content item

to the prefetch buffer based on a user's preference and a current display window (page 3

paragraph [0027], page 5 paragraphs [0076] [0080], page 6 paragraph [0082]), wherein the

presentation layer transmits the prefetched audio/visual content item based on a preset frequency

of prefetching (page 6 paragraph [0105], page 11 paragraph [0165]).

As to dependent claim 24, Janik teaches an application configured to utilize the

prefetched audio/visual content (page 6 paragraph [0084]).

As to dependent claim 25, Janik teaches wherein the presentation layer transmits the

prefetched audio/visual item content based on a preset range of display windows (page 1

paragraph [0008], page 12 paragraph [0176]).

As to independent claim 27, Janik teaches a method comprising:

detecting an activity (page 6 paragraph [0082] → user selecting preferences);

setting a prefetch parameter based on the detected activity (page 6 paragraph [0082]),

wherein the prefetch parameter includes a frequency of prefetching (page 6 paragraph [0105],

page 11 paragraph [0165]);

detecting a current display window (page 5 paragraphs [0075] [0076], page 6 paragraph

[0087]); and

prefetching a content item based on the prefetch parameter and the current

display window at any time and in response to the detected activity (Figs. 3,4, page 6 paragraphs

[0082] [0094]).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

**Claims 4 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Janik.**

As to dependent claim 4, note the discussion above, Janik teaches the method of claim

1. Janik teaches retaining the user' preference information (page 5, paragraph [0080], page 6

paragraph [0082]). However Janik does not explicitly teach identifying the user associated with

the preference. Official Notice is taken, that it is old and well known in the art for a user's

preference information to be stored and obtained by identifying the user through a variety of

methods, for example, the use of a username and password.

It would have been obvious to one skilled in the art at the time the invention was made

than an identification process for retrieving the user's preference would be implemented to

eliminate the need for the user to re-enter their preferences for uses at a different time or

location.

As to dependent claim 17, Janik teaches the function of wherein the search parameter is

a prefetchcontentlist command (page 6 paragraph [0082]). However, Janik does not label this

function as a prefetchcontentlist command. Official Notice is taken that it is old and well known

in the art that classes such as in databases, contain commands and are usually named to be

descriptive of the function at which it is intended to perform.

It would have been obvious to one skilled in the art at the time the invention was made to

have labeled a search parameter prefetchcontentlist to allow for ease for identification if a user or

programmer needed to make modifications to the class and its commands.

As to dependent claim 18, Janik teaches the function of wherein the search parameter is

a getcontentlist command (page 8 paragraph [0132], page 9 paragraph [0134). However, Janik

does not label this function as a getcontentlist command. Official Notice is taken that it is old

and well known in the art that classes such as in databases, contain commands and are usually

named to be descriptive of the function at which it is intended to perform.

It would have been obvious to one skilled in the art at the time the invention was made to have labeled a search parameter getcontentlist to allow for ease for identification if a user or programmer needed to make modifications to the class and its commands.

As to dependent claim 19, Janik teaches the function of wherein the search parameter is a getcontentbygenre command (page 5 paragraphs [0076] [0077]). However, Janik does not label this function as a getcontentbygenre command. Official Notice is taken that it is old and well known in the art that classes such as in databases, contain commands and are usually named to be descriptive of the function at which it is intended to perform.

It would have been obvious to one skilled in the art at the time the invention was made to have labeled a search parameter getcontentbygenre to allow for ease for identification if a user or programmer needed to make modifications to the class and its commands.

As to dependent claim 20, Janik teaches a function of wherein the search parameter is a getmediacontainer command (page 5 paragraphs [0076] through [0079]). However, Janik does not label this function as a getmediacontainer command. Official Notice is taken that it is old and well known in the art that classes such as in databases, contain commands and are usually named to be descriptive of the function at which it is intended to perform.

It would have been obvious to one skilled in the art at the time the invention was made to have labeled a search parameter getmediacontainer to allow for ease for identification if a user or programmer needed to make modifications to the class and its commands.

Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Janik in view of Ehrmantraut et al (The Personal Electronic Program Guide – Towards the Pre-selection of Individual TV Programs, 1996).

As to dependent claim 28, note the discussion of claim 1, Janik teaches organizing audio/visual content. Janik does not explicitly teach organizing the content according to use patterns of the user. Ehrmantraut teaches a mode that analyzes a user's viewing habits in order to obtain content that would be of interest to a user to provide for additionally filtering of content (page 247).

It would have been obvious to one skilled in the art at the time the invention was made to have combined the references to organize content that a user does not have to explicitly select.

As to dependent claim 29, Janik teaches storing information based on a user's preference for quick access. However Janik does not teach where the content stored is content utilized more frequently. Ehrmantraut teaches a mode that analyzes a user's viewing habits in order to obtain content that would be of interest to a user to provide for additionally filtering of content.

It would have been obvious to one skilled in the art at the time the invention was made to have combined the references to organize and quickly access content that a user does not have to explicitly select.

Response to Arguments

Applicant's arguments with respect to claim 1 has been considered but are moot in view of the new ground(s) of rejection. However, the examiner will address arguments that pertain to the teachings of Janik.

In regards to independent claims 1, 12, 13, and 23, the basis of the Applicant's arguments asserts that Janik does not teach, "detecting an activity" or "setting a prefetch parameter based on the detected activity.

The Examiner respectfully disagrees.

Janik teaches prefetching the user is able to create a preference of content by checking boxes beside content types that they wish to receive, which in returns displays content that is related to the users selections. Janik teaches prefetching a content item based on a prefetch parameter. The detecting is taught by the system recognizing selections by the user for filtering information. As previously stated the user is able to select content preference, which filters for content that is wanted by the user for viewing, which constitutes parameters. Janik also teaches where content can be accessed, cached, and streamed from the internet at times prescribed by the user. Further Fig. 22 exemplifies a web page (current display window), which receives the preference information for processing of the users preferred content. Only content that has been selected by the user through the user interface which was detected by the system will be

retrieved. It should be noted that the term "prefetch" is interpreted as obtaining information in advance for future use. Janik provides multiple examples of obtaining information in advance (page 11 paragraph [0167], page 12 paragraph [0184], page 13 paragraphs [0192]-[0193]) for future use.

For the reasons of Janik teaching the limitations of independent claims 1, 12, 13, and 23, the dependent claims therefore are also rejected under the teaches of Janik.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea N. Long whose telephone number is 571-270-1055. The examiner can normally be reached on Mon - Thurs 6:00 am to 3:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doug Hutton can be reached on 571-272-4137. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Andrea Long
August 7, 2008

/Rachna S Desai/
Primary Examiner, Art Unit 2176